

**IN THE MISSOURI SUPREME COURT**

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**BRENT WERREMEYER AND TONYA WERREMEYER**

**Appellants\Respondents**

**v.**

**K.C. AUTO SALVAGE CO., INC. et al**

**Respondent\Appellant**

**SC 85551**

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**RESPONDENT\ CROSS APPELLANT'S SUBSTITUTE  
REPLY BRIEF**

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K.C. AUTO SALVAGE CO., INC.**

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## II. TABLE OF AUTHORITIES AND CASES

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## **II. ARGUMENT**

### **A. THE FRAUD COUNT**

The Appellants/Respondents treat this case as if this were a text book used car-hidden defect case which it is not. There was no rollback of the odometer. There was no complaint about the mechanical operation of the vehicle. A mechanic with 20 years experience with Toyota vehicles could not tell that the car was two cars combined into one! (Tr.306)

Mr. Werremeyer did not want to buy a car that had been wrecked. (Appellants/Respondents brief p.11) They did not buy a car that was wrecked. They bought a car whose frame on top was stolen from another car. If Tyson told Brent Werremeyer that the car had not been wrecked (Tr.132 and 494) he was telling the truth. If Tyson told Brent Werremeyer that there was a clean title to the car, Tyson was telling the truth.(Appellants/Respondents' brief p. 11) If Tyson knew that the identifying numbers on the vehicle's windows had been removed so certainly did Brent Werremeyer. If Tyson told Brent Werremeyer that the car had been repossessed, Brent Werremeyer still did not trust Tyson and asked to look at the title (Tr 522) which Brent Werremeyer admitted that he relied on in purchasing the vehicle just as Tyson had in purchasing the vehicle from the auto auction. (Tr.210-211.)

If the Werrremeyers overpaid for the car, so did K.C. Auto. (Tr.123)

Brent Werremeyer did not trust Tyson. (Tr. 522) What was hidden from Brent Werremeyer? He was allowed to inspect the title (Tr.522) He was allowed to test drive the vehicle on two occasions. (Tr. 515) He was allowed to take the car to a mechanic (Tr. 515) K.C. Auto paid for an alignment. (Tr. 516) K.C. Auto warranted the car for 90 days. (Tr. 518) Brent Werremeyer was allowed to inspect the car as much as he wanted to. (Tr. 519)

The point is that the essence of the fraud lay in the title to the car because the damages sustained by the Werremeyers go to the fair market value of the car and the \$2,000 it cost them to buy the car back **rather than any defect in the vehicle.**

**Therefore, what was material to the purchase was the incorrect title because no matter what Tyson told Brent Werremeyer it was the incorrect title that was the cause of the Werremeyers' damages whether the car was perfect or wrecked, stolen, or repossessed .**

The Werremeyers rely on Wasson v Schubert, 964 SW2d 520 (Mo.App.W.D.1998) in support of the proposition that they were entitled to rely on the representations of salesman Tyson irrespective of what was on the title to the car. But in Wasson, the contract for sale of that particular house mandated that the sellers agreed to disclose to the buyer all material defects, conditions, and facts **known**, to the seller which, “may materially affect the value of the property.” The Werremeyers did not show that Tyson relied on something other than the California title to obtain knowledge that the car was either wrecked or repossessed.

## **B. THE STATUTORY VIOLATION**

Everything that K.C. Auto knew about the Toyota's distinguishing numbers being removed, altered or defaced, the Werremeyers knew because nothing was hidden from

them. “Mr. Werremeyer testified that all four windows on the Toyota were scratched-up in the exact same spot.” (Appellants/Respondents’ brief p.23) Toyota service manager, Turner, saw the scratched out glass on the doors and suspected that they had come from a salvage yard. (TR312)

Therefore, nothing was hidden from the Werremeyers in regard to VIN alteration and given Turner’s lack of concern about the glass etchings there was evidence that explanations other than the alteration of the VIN could have caused the etchings.

Because the title to the vehicle was a clean California title with a VIN which matched that on the dashboard of the vehicle (Tr. 522), the bold statement that K.C. Auto knew that the distinguishing numbers had been removed, altered or defaced, cannot be justified ( Appellants/Respondents’ brief p.23). If K.C. Auto deliberately tried to deceive the Werremeyers in regard to the VIN it did a very poor job of it.

**The ORIGINAL manufacturer’s number was not altered because it matched the VIN on the title** when Mr. Werremeyer checked it. (Instruction 8 p. A-4 Respondent/Appellant’s brief). Therefore, there was no intent to deceive the purchaser, criminal or otherwise, which is the guts of the statute.

### **C. PUNITIVE DAMAGES**

The Appellants/Respondents produced no evidence to suggest that the conduct of K.C. Auto was either egregious or that it demonstrated a clear and disturbing disregard for the safety of the Werremeyers or for their economic interest .

K.C. Auto paid too much for the vehicle, as did the Werremeyers, because it had no

knowledge of the true circumstances surrounding the vehicle. K.C. Auto (in contrast to Copart) cooperated with the Missouri Highway Patrol after the true facts were discovered.

**If K.C. Auto's conduct demonstrated a clear disregard for the Plaintiff's economic interest then why did Tyson call Brent Werremeyer after the Missouri Highway Patrol got involved and request that he bring the car in try and remedy the problem. (Tr. 53)**

Why is K.C. Auto to be punished for trying to remedy a wrong irregardless of who caused the harm?

### **III. CONCLUSION**

Appellants/Respondents are arguing as if this case were a typical used car case involving a defect hidden from the buyers. In doing so they fail to recognize, that due to the unique circumstances of this case, the seller of the vehicle (K.C. Auto) was itself subject to fraudulent conduct on behalf of Copart.

Appellants/Respondents are arguing as if they relied on everything salesman Tyson

represented when in fact Brent Werremeyer admitted he did not trust Tyson and therefore checked the VIN on the vehicle's title .

Appellants/Respondents are arguing that the essence of their economic damages were caused by Tyson's alleged representations when in fact it was the defective title that caused their damages.

Appellants/Respondents are arguing that the VIN on a car title cannot be trusted as correct and that every seller must challenge that VIN and not rely on the title to the vehicle.

Appellants/Respondents are arguing that when a deal goes bad, the seller should be punished by offering to make it right with the buyer.

### **CERTIFICATE OF SERVICE**

I certify that two copies of the above pleading were mailed postage pre-paid to the following attorneys on this \_\_\_\_ day of December, 2003.

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**CERTIFICATION PURSUANT TO RULE 84.06**

1. Pursuant to Rule 84.06 I certify that this Brief contains 1255 words in compliance with Rule 84.06(b).
2. This Brief contains 251 lines.
3. The disc submitted with this Brief has been scanned and it is virus free.

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